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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,770	12/17/2001	Yoshihito Ikeda	F-7178	2012
277	7590	10/13/2005	EXAMINER	
PRICE HENEVELD COOPER DEWITT & LITTON, LLP 695 KENMOOR, S.E. P O BOX 2567 GRAND RAPIDS, MI 49501			ART UNIT	PAPER NUMBER

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/018,770	Applicant(s) IKEDA ET AL.	
	Examiner Francisco C. Prats	Art Unit 1651	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 12 September 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

The brief improperly submits and argues new evidence which was filed after the notice of appeal, and before the date of the appeal brief. Specifically, the brief lists as evidence the Lindberg article (PNAS 101(45):15893-15898 (2004)), and argues patentability based in part on that article. The Lindberg article was first submitted 9-7-2005, after the date of the notice of appeal (8-1-2005), and 5 days before the date the appeal brief was submitted (9-12-2005).

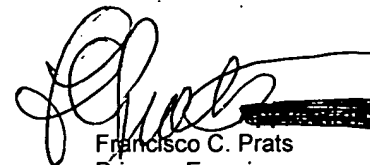
37 CFR § 41.33(d)(1) provides that such evidence submitted after appeal but before the brief may be entered only if it overcomes all pending rejections, and upon a showing of good and sufficient reasons why the evidence was not submitted previously. Neither requirement is met here.

37 CFR § 41.39(c)(2) in turn provides that "[a] brief shall not include any . . . new or non-admitted affidavit or other evidence." 37 CFR 41.39(d) further provides that "[i]f a brief is filed which does not comply with all the requirements of paragraph (c) of the section, appellant will be notified of the reasons for non-compliance and given a time period within which to file and amended brief."

Because the appeal brief cites and relies on evidence not previously submitted in accordance with 37 CFR § 41.33(d)(1), this notice is issued pursuant to 37 CFR § 41.39(d).

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Continuation Sheet (Patents and Trademark-462)


Francisco C. Prats
Primary Examiner
Art Unit: 1651

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PTOL-462 (Rev. 7-05)

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)

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